

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOUG J. BOOMIS

Claimant

VS.

U.S.D. #446

Respondent

AND

KANSAS ASSOC. OF SCHOOL BOARDS

AND/OR

COLONIAL CASUALTY INSURANCE

Insurance Carriers

Docket No. **241,812**

ORDER

The claimant requested review of the Award dated August 24, 2000, entered by Administrative Law Judge Jon L. Frobish. The Workers Compensation Board heard oral argument on January 17, 2001.

APPEARANCES

Claimant appeared by his attorney, Patrick C. Smith of Pittsburg, Kansas. Respondent and Kansas Association of School Boards appeared by their attorney, Anton C. Andersen of Kansas City, Kansas. The respondent and Colonial Casualty Insurance Company appeared by their attorney, Jeffery R. Brewer of Wichita, Kansas. There were no other appearances.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. The Award did not list the deposition of John P. Estivo, D. O., dated July 14, 2000.

At oral argument before the Board, the parties agreed that Dr. Estivo's deposition should be considered part of the record.

ISSUE

The sole issue raised on review by the claimant is the nature and extent of disability.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, including the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The claimant was employed in the maintenance personnel section for the respondent from August 1993 until May 12, 1998. The claimant testified that on June 29, 1994, he injured his back while lifting boxes filled with printed material. The claimant received treatment from his chiropractor, Dr. Null, and was off work for a while. He then returned to work with no restrictions.

The claimant sustained additional work-related injuries to his back in August 1997 and January 1998. He testified that on both of those occasions he was again lifting and loading boxes with printed material obtained from the print shop. The last work-related injury reported by the claimant occurred in May 1998 when he hurt his back while lifting a lawn mower into the back of a pick-up truck. The last incident occurred on a Thursday and the claimant did not return to work until Monday. Upon his return to work he was terminated for missing too much work.

The claimant denied any instances of treatment for his low back prior to the June 1994 incident. On cross-examination, he testified that he just didn't recall any prior treatment. However, the claimant's medical records indicate that he had been seeking intermittent chiropractic treatment since at least 1976. The claimant had treated with Dr. Null and before that with Dr. Null's father. The claimant had received treatments for chronic low back pain since 1985. A history of numerous work-related and non-work-related aggravations or exacerbations to his lower back are contained in the records of Dr. Null. This consistent treatment pattern continued subsequent to the claimant's termination of employment with the respondent.

Dr. Null testified that the claimant had a long-standing medical history of incidents causing back pain. Following treatment the claimant would return to his pre-incident condition. Moreover, the pattern continued with non-work aggravation to the claimant's lower back subsequent to his leaving work for the respondent in May 1998. Dr. Null specifically stated that the problems due to the incidents at work were temporary because the claimant got better following treatment.

The claimant primarily relies upon the testimony of Dr. Smith who concluded that the claimant had sustained a 5 percent permanent partial general body functional impairment due to his work-related injuries. Dr. Smith was not informed of the claimant's long-standing history of injury and improvement with treatment. Dr. Smith testified that he was only provided Dr. Null's medical records from June 1994 to May 1998. The claimant likewise had not advised Dr. Smith that he had reinjured his back moving dirt at home in March 1999 just prior to his examination by Dr. Smith. Dr. Smith acknowledged the importance of having an accurate medical history in order to perform an accurate evaluation. The weight to be accorded the testimony of Dr. Smith is minimized because he based his conclusions upon an incomplete medical history regarding the claimant's prior back injuries.

The claimant was also examined by Dr. Estivo who expressed the opinion that the claimant had a 5 percent permanent partial general body functional impairment. Dr. Estivo originally attributed the causation of the impairment to the June 1994 incident. He further opined that the subsequent injuries were simply temporary exacerbations or aggravations of the original injury. However, as with Dr. Smith, Dr. Estivo did not have a complete medical history of the claimant prior to June 1994 nor did he have a complete history of treatment subsequent to claimant's termination of employment with the respondent. Dr. Estivo agreed that he needed a complete medical history in order to make an accurate assessment of the causation of the claimant's impairment.

The Administrative Law Judge determined that the claimant had sustained work-related injuries on the dates alleged but that such injuries were temporary exacerbations. Following treatment the claimant always returned to his pre-injury condition with neither physical restrictions nor permanent impairment.

The Board agrees with the determination of the Administrative Law Judge that the persuasive evidence in the record supports a finding that the injuries did not result in any permanent impairment. The primary health care provider was Dr. Null and his frequent contact with the claimant over a long course of treatment places him in the best position to determine the cause and effect of the injuries. Dr. Null testified that after each of the work-related incidents the claimant, following treatment, would return to his preinjury condition with no permanent impairment. The weight to be accorded the testimony of both Drs. Estivo and Smith is minimized because neither doctor had the claimant's complete medical history. Both doctors admitted that such a history is necessary in order to make an accurate determination of causation for any resultant impairment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Jon L. Frobish dated August 24, 2000, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

Copies to:

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